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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE  
ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

Master Docket No. 11-CV-2509-LHK

**DEFENDANTS' JOINT RESPONSE TO  
PLAINTIFFS' ADMINISTRATIVE  
MOTION TO FILE UNDER SEAL**

Date Consolidated Amended Compl. Filed:  
September 13, 2011

Pursuant to N.D. Cal. Civ. L.R. 7-11 and 79-5, Defendants<sup>1</sup> hereby jointly respond to Plaintiffs' Administrative Motion to File Under Seal (1) Portions of Plaintiffs' Reply In Support of Supplemental Motion for Class Certification; (2) Portions of Expert Witness Report of Edward E. Leamer, Ph.D.; (3) Exhibits A through O and Plaintiffs' Deposition Exhibits 122, 1304, 2738, and 2739, attached to the Declaration of Anne B. Shaver in Support of Plaintiffs' Supplemental Motion for Class Certification; and (4) Declaration of Sheryl Sandberg (Dkt. No. 454). Defendants seek to seal (1) Portions of Plaintiffs' Reply In Support of Supplemental Motion for Class Certification; (2) Portions of Rebuttal Supplemental Expert Report of Edward E. Leamer, Ph.D.; and (3) Portions of Exhibits A through O and Plaintiffs' Deposition Exhibits 122, 1304, 2738, and 2739, attached to the Declaration of Anne B. Shaver in Support of Plaintiffs' Supplemental Motion for Class Certification (collectively, the "Sealed Materials"). The Sealed Materials have been designated Confidential or Attorneys-Eyes Only under the Stipulated Protective Order (Modified by the Court) (Dkt. No. 107). Defendants are filing corresponding declarations in support of their respective sealing requests.

# **I. LEGAL STANDARD**

Rule 26(c) of the Federal Rules of Civil Procedure provides broad discretion for a trial court to permit sealing of court documents for, inter alia, the protection of "a trade secret or other confidential research, development, or commercial information." Fed. R. Civ. P. 26(c)(1)(G). The Ninth Circuit has "carved out an exception to the presumption of access to judicial records for a sealed discovery document [attached] to a nondispositive motion," where the requesting party shows good cause exists to keep the records under seal. *Navarro v. Eskanos & Adler*, No. C-06 02231, 2007 U.S. Dist. LEXIS 24864, at \*6 (N.D. Cal. March 22, 2007) (citing *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) ("[A] 'particularized showing' under the 'good cause' standard of Rule 26(c) will 'suffice[] to warrant preserving the secrecy of sealed discovery material attached to nondispositive motions.'"); *see also Pintos v. Pacific*

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<sup>1</sup> For purposes of this motion, "Defendants" shall refer exclusively to Apple Inc., Adobe Systems, Inc., Google Inc., Intel Corporation, and Intuit Inc..

1 *Creditors Assoc.*, 565 F.3d 1106, 1115 (9th Cir. 2009) (“In light of the weaker public interest in  
2 nondispositive materials, we apply the ‘good cause’ standard when parties wish to keep them  
3 under seal.”).

## 4 5 **II. GOOD CAUSE EXISTS TO SEAL DEFENDANTS’ CONFIDENTIAL** 6 **INFORMATION**

7 The redacted portions of the Sealed Materials contain confidential and commercially  
8 sensitive information about employee compensation, including Defendants’ compensation data,  
9 as well as information that reflects certain Defendants’ internal decision-making regarding their  
10 business strategies related to compensation and internal assessments of their and other  
11 employers’ competitive position in the labor market. Defendants also seek to keep under seal  
12 those materials that reflect compensation practices, strategies and policies; recruiting and hiring  
13 data, practices, strategies and policies; and personal identifying information of employees or  
14 candidates. Defendants designated the foregoing information “Confidential” or “Attorneys Eyes  
15 Only” under the Protective Order.

16 As each of the Defendants’ separately filed declarations demonstrate, Defendants kept the  
17 sealed information confidential and the public disclosure of this information would cause each  
18 Defendant harm by giving third-parties (including individuals responsible for competitive  
19 decision-making) insights into confidential and sensitive aspects of each of the Defendants’  
20 strategies, competitive positions, and business operations, allowing these third-parties to  
21 potentially gain an unfair advantage in dealings with and against each of the Defendants. A  
22 significant portion of the sealed information is employee compensation data. This type of  
23 information is regularly sealed because of its confidential and private nature. *See Renfro v.*  
24 *Unum, et al.*, No. 09-2661, 2010 BL 104197 (N.D. Cal. May 10, 2010) (granting a motion to seal  
25 records containing plaintiffs’ salary information); *Nettles v. Farmers Ins. Exch.*, No. C06-5164,  
26 2007 WL 858060, at \*2, 2007 BL 247444 (W.D. Wash. Mar. 16, 2007) (holding that salary  
27 review notices for third parties “who have not chosen to have their salary history placed into the  
28 public record” could be sealed.); *EEOC v. Kokh, LLC*, No. CIV-07-1043, 2010 U.S. Dist. LEXIS  
82526, at n.1, 2010 BL 187807 (W.D. Okla. Aug. 09, 2012) (noting that portions of summary

1 judgment materials were filed under seal because they contained “confidential salary  
2 information.”).

3 Similarly, compensation policies, practices and decisions are routinely subject to a  
4 sealing order. *In re Wells Fargo Loan Processor Overtime Pay Litigation*, No. C 07-01841, at  
5 \*16, 2008 U.S. Dist. LEXIS 53616, 2008 BL 123131 (N.D. Cal. June 09, 2008) (noting that a  
6 “compensation policy” was filed under seal); *Hertz Equip. Rental Co. v. Useda*, No. CV-10-  
7 4953, 2010 BL 259718, at \*2 (N.D. Cal. Nov. 02, 2010) (granting a temporary restraining order  
8 to enjoin a former employee from using a company’s “confidential and/or trade secret employee  
9 compensation information”).

10 In addition, good causes exists to seal confidential information relating to a company’s  
11 internal business, recruiting or hiring practices, strategies and policies, including confidential  
12 analyses of a company’s market position. *See* Fed. R. Civ. Proc. 26(c)(1)(G) (permitting sealing  
13 of “a trade secret or other confidential research, development, or commercial information”);  
14 *Krieger v. Atheros Commc’ns, Inc.*, Case No. 11-CV-00640, 2011 U.S. Dist. LEXIS 68033 at  
15 \*3-4 (N.D. Cal. June 25, 2011) (holding that a company could seal a presentation from its  
16 investment adviser that contained “sensitive and confidential information, including long-term  
17 financial projections, discussions of business strategy, and competitive analyses”); *Network*  
18 *Appliance, Inc. v. Sun Microsystems Inc.*, Case No. C-07-06053, 2010 U.S. Dist. LEXIS 21721,  
19 at \*9 (N.D. Cal. Mar. 10, 2010) (sealing “internal information regarding [defendant’s] business  
20 strategies and opportunities that were not widely distributed”); *see also TriQuint Semiconductor,*  
21 *Inc. v. Avago Techns. Ltd.*, Case No. CV 09-531, 2011 U.S. Dist. LEXIS 143942, at \*9 (D. Ariz.  
22 Dec. 13, 2011) (granting motion to seal “market analysis information,” under “compelling”  
23 reason standard applicable to dispositive motions, including a “spreadsheet tracking information  
24 regarding potentially competitive products,” and other business strategy documents, such as  
25 information relating to “product competitiveness, and market and technological opportunities  
26 and risks”).

27 Additionally, good cause exists to seal information pertaining to Defendants’ recruiting  
28 policies and practices that are proprietary business methods and/or trade secrets. This

1 confidential and commercially sensitive business information is non-public and should remain  
2 confidential under Rule 26(c)(1)(G) (permitting sealing of “a trade secret or other confidential  
3 research, development, or commercial information”); *see also* Cal. Civ. Code § 3426.1(d)  
4 (defining trade secrets as information that “(1) Derives independent economic value, actual or  
5 potential, from not being generally known to the public or to other persons who can obtain  
6 economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable  
7 under the circumstances to maintain its secrecy.”).

8 Good cause also exists for sealing the identities and personal contact information of  
9 specific employees or applicants that are contained in the Sealed Materials. These employees or  
10 applicants have not sought to make their identities known or placed in the public record. *Nettles*  
11 at \*2 (holding that the interests of private parties outweighed the public’s right of access with  
12 respect to information pertaining to third party salary and employment separation information).

### 13 **III. CONCLUSION**

14 For the foregoing reasons, Defendants respectfully request that this Court order the  
15 portions of the Sealed Materials identified in each Defendant’s declaration to be placed under  
16 seal. In accordance with Civil Local Rule 79-5(d), a proposed order granting Defendants’  
17 Response to Plaintiffs’ Administrative Motion to Seal has been lodged with the Clerk in hard  
18 copy and served on counsel for Plaintiffs. In accordance with Civil Local Rule 79-5(d),  
19 Defendants’ proposed redacted versions of the Sealed Materials are being lodged with the Clerk  
20 in hard copy showing proposed redacted portions highlighted in yellow within a sealed envelope.  
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1 Dated: July 19, 2013

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22 **ATTESTATION:** The filer attests that concurrence in the filing of this document has  
23 been obtained from all signatories.  
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